

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:07-HC-2110-BR

UNITED STATES of AMERICA,)	
)	
Petitioner,)	
v.)	ORDER
)	
JAMES WOODRUFF,)	
)	
Respondent.)	

This matter is before the court on respondent's 27 August 2009 motion to dismiss. The government filed two responses in opposition, and respondent filed a reply. The motion is ripe for disposition.

By way of brief background, respondent was convicted in a military court-martial proceeding of "Indecent Acts, Sodomy, Carnal Knowledge, Making False statements with Intent to Deceive, Attempted Sodomy, and Communicating a Threat[.]" (6/5/07 § 4248 Certification at 1.) At some point during respondent's sentence, the Department of Defense "transferred respondent into the physical control of a BOP facility for the specific and limited purpose of 'carr[ying] into execution' the 'sentence of confinement' imposed by his court-martial" under 10 U.S.C. § 858(a) and a 27 May 1994 Memorandum of Agreement between the Department of the Army and the Bureau of Prisons. (Br. Supp. Mot. Dismiss at 5.) The government filed a petition for respondent's commitment under 18 U.S.C. § 4248 two days prior to the scheduled date of his release, on 5 June 2007.

On 7 September 2007, this court found that 18 U.S.C. § 4248 is unconstitutional, and granted five motions to dismiss. United States v. Comstock, 507 F. Supp. 2d 522, 559 (E.D.N.C. 2007). The Fourth Circuit stayed the release of those respondents, and on 8 January 2009, affirmed the ruling. United States v. Comstock, 551 F.3d 274 (4th Cir. 2009). Respondent filed a motion to

dismiss on 11 September 2007 based on the “holdings made in this Court’s September 7, 2007 Order in the case of *United States v. Comstock*,” (9/11/07 Mot. Dismiss at 1); however, on 8 January 2008, the court allowed the government’s motion to stay a ruling on that motion pending the appellate process in Comstock. (1/8/08 Order at 9.) On 3 April 2009, the Supreme Court stayed issuance of the mandate in Comstock. The Supreme Court granted *certiorari* on 22 June 2009, and heard oral arguments on 12 January 2010.

On 13 January 2010, this court found that 18 U.S.C. § 4248 does not apply to military prisoners because they are not “in the custody of the Bureau of Prisons” pursuant to 18 U.S.C. § 4248(a). United States v. Joshua, Case No. 5:09-HC-2035-BR (1/13/10 Order at 2-6). For the reasons stated in that order, the instant motion to dismiss is ALLOWED. However, for the reasons stated in United States v. Comstock, 507 F. Supp. 2d 522, 560 (E.D.N.C. 2007), the court temporarily STAYS the effect of this order until further order. The government may file a motion to stay respondent’s release within twenty (20) days of the date of this order. Respondent shall have twenty (20) days thereafter to file any response.

This 30 March 2010.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is written over a horizontal line.

W. Earl Britt
Senior U.S. District Judge

usa/jw/tec